

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1749 OF 2005
IN
WRIT PETITION NO. 8809 OF 2003

Shri Dilip D. Deshmukh .. Petitioner

Vs.

M/s. Wasp Pumps Pvt. Ltd. .. Respondent

Mr. P.M. Patel for the Petitioner.
Ms. Melanie D'souza i/by M/s Thakore Jariwala and
Associates for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : October 21, 2005.

P.C.:

1. This application has been filed in Writ Petition No.8809 of 2003 praying for permission to withdraw the amount deposited by the petitioner-employer. The complainants before the Industrial Court had filed an application at Exh.34 in Complaint (ULP) No.266 of 2002 praying for directions to pay and/or deposit the earned wages for the months of May to July 2003. This application came to be allowed by the learned Member of the Industrial Court

on 1/11/2003 and Review Petition against the same order came to be dismissed on 17/11/2003. Both these interlocutory orders have been challenged in Writ Petition No.8809 of 2003, which has been admitted by this court on 10/2/2004 and ad-interim relief in terms of prayer clause (d) was granted subject to the condition that the amount mentioned in Clause 4 of the order passed by the Industrial Court on 1/11/2003 is deposited with the Registry of this Court. The said amount has been deposited though belatedly. Therefore, this application for withdrawal of the amount.

2. It also requires to be noted that Complaint (ULP) No.266 of 2002 has been finally decided by the Industrial Court in favour of the complainants on 8/6/2004 and the said order has been challenged in Writ Petition No.6673 of 2004 which is waiting admission. On account of the final order passed by the Industrial Court and which has been challenged in Writ Petition No.6673 of 2004, the Writ Petition No.8809 of 2003 has virtually become infructuous.

3. Though this application came up for orders on more than three occasions, the employer has neither filed a reply nor has placed on record a break up of the amount due to each of the complainants so that the amount deposited could be disbursed accordingly. An inference, therefore, can be drawn that the employer does not wish to oppose this application. The learned counsel appearing for the employer today orally submitted that the full salary is not payable and if that be so, the employer could bring on record the break up of the net amount payable to each of the complainants which is the first prayer in this application.

4. Hence, the application is allowed in terms of prayer clause (b) subject to the condition that the withdrawal of the amount shall be subject to the final decision in Writ Petition No.8809 of 2003 and if it is found that the amount withdrawn is in excess of their entitlement, the complainants shall refund the said amount to the employer.

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(B.H. Marlapalle, J.)